

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT CARROLL,

Plaintiff,

-against-

1:23-CV-1553 (LEK/CFH)

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On December 11, 2023, Plaintiff Robert Carroll commenced this action by filing a complaint against the United States of America under the Federal Torts Claims Act (“FTCA”), 28 U.S.C. § 2671, *et seq.* Dkt. No. 1 (“Complaint”). On April 4, 2024, the Honorable Christian F. Hummel, United States Magistrate Judge, filed a report and recommendation recommending that the Complaint be dismissed without prejudice and with leave to amend. Dkt. No. 4 (“Report and Recommendation”). For the reasons discussed below, the Report and Recommendation is approved and adopted in its entirety.

II. BACKGROUND

The Court presumes familiarity with the allegations in the Complaint as discussed in the Report and Recommendation. See R. & R. at 5–7.

In the Report and Recommendation, Judge Hummel reviewed the Plaintiff’s arguments and applicable law and determined that, although “Plaintiff summarily states that he ‘has fully complied’ with the FTCA’s procedural requirements[,] . . . he fails to provide any facts or explanation to support his allegation.” Id. at 12. Judge Hummel therefore concluded that

“[P]laintiff has failed to sufficiently plead compliance with the FTCA’s exhaustion requirements.” Id. Accordingly, Judge Hummel recommended that the Complaint be dismissed without prejudice and with leave to amend because a “more detailed pleading could potentially cure the defects identified.” Id. at 14.

On April 15, 2024, Plaintiff filed a letter supplementing his Complaint, in which he states, “I understand how my complaint was deficient.” Dkt. No. 5 (“Letter”). The Letter does not appear to object to the Report and Recommendation. See id. at 1 (“If you still require that I amend the [C]omplaint to incorporate the foregoing, I will do so without objection.”). Plaintiff has not filed an amended complaint.

III. LEGAL STANDARD

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1(b). “When a party files specific objections to a magistrate judge’s report-recommendation, the district court makes a ‘de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” Walker v. Artus, 998 F. Supp. 2d 18, 24 (N.D.N.Y. 2014) (citing 28 U.S.C. § 636(b)(1)). However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744

(S.D.N.Y. 2019) (internal citations omitted). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

IV. DISCUSSION

Since no party objected to the Report and Recommendation, the Court reviews for clear error. See DiPilato, 662 F. Supp. 2d at 339. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report and Recommendation, Dkt. No. 4, is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that the Complaint, Dkt. No. 1, is **DISMISSED without prejudice and with leave to amend**; and it is further

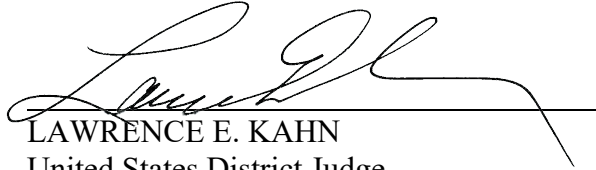
ORDERED, that, should Plaintiff wish to proceed with this action, he must file an amended complaint within thirty (30) days from the filing of this Memorandum-Decision and Order; and it is further

ORDERED, that if Plaintiff fails to timely file an amended complaint as directed above, the Clerk shall enter judgment indicating that this action is dismissed without prejudice without further order of this Court pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted. In that event, the Clerk is directed to close this case; and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: June 24, 2024
Albany, New York



LAWRENCE E. KAHN
United States District Judge